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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,198	09/04/2001	Rhonda Selleck	21854/0022	1190

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/944,198

Applicant(s)

SELLECK, RHONDA

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11 is indefinite in the use of the phrase "forming an aqueous solutionwith a 50 to 150 times its weight of a food grade antioxidant". It is not known whether "50 to 150 times" is of the flavonoid or the weight of the solution.

Claim Objections

Claims 11, 16, 18, 19 are objected to because of the following informalities: claim 11, line 4 contains an extra "a" before 50. Claim 16, line 4 recites "alipoic acid" which should probably be alpha lipoic acid. Claim 18, line 3 has the same problem. Appropriate correction is required. In claim 19, line 4, after "dip", there should probably be a comma. Also, on lines 3 and 4 there are extra "a"s.

In the specification, page 5, line 11, "glutamate" should be - gluconate- .

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11,12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Sono '024A.

Sono discloses a process of making dry fruits or vegetables by treating with Vitamin E and ascorbic acid which are known antioxidants and a polyphenol which is a known form of a flavonoid (para. 21) (claims 11 and 15). The term "treating" with a liquid is seen to encompass dipping or spraying or coating as in claim 11. The amount is seen to have been within the claimed ranges as in claim 11 and 12 (English abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 14, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sono et al. (JP 08332024A) abstract and Japanese patent.

Claim 13 further requires particular types of flavonoids. However, as the objective of extending the shelf life is obtained by retaining color in storage is achieved, it is seen that one of the claimed flavonoids or its equivalents was used. Nothing new or unobvious is seen in the use of a particular flavonoid absent anything new or unexpected. Therefore, it would have been obvious to use a flavonoid as claimed.

Claim 14 further requires the use of alpha lipoic acid. The reference discloses the use of antioxidants, vitamin e and ascorbic acid and erythorbic acid. Nothing new is seen in the use of alpha lipoic acid absent a showing of unexpected results. Therefore,

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it would have been obvious to
anything new or unexpected because the other acids are antioxidants also.

Claim 19 further requires that the fruit is peeled and cut, and then dipped in the claimed solution, which contains particular amounts of flavonoids, and antioxidants and claim 20 is to the process thereof. Claim 19 is a product by process claim whose product limitations have been discussed above. See *In re Thorpe* as in the last office action. The preservative composition has also been shown above as in claim 20. Therefore, it would have been obvious to make a composition containing the claimed ingredients as disclosed by Sono et al.

ARGUMENTS

Applicant's arguments with respect to claims 11-20 have been considered but are moot in view of the new ground(s) of rejection.

Interference

Claims 16-18 are rejected under 35 U.S.C. 135(b) as not being made prior to one year from the date on which U.S. Patent No. 6,365,212 was granted. See *In re McGrew*, 120 F.3d 1236, 1238, 43 USPQ2d 1632,1635 (Fed. Cir. 1997) where the Court held that the application of 35 U.S.C. 135(b) is not limited to *inter partes* interference proceedings, but may be used as a basis for *ex parte* rejections.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 8-25-03

H. Pratt
HELEN PRATT
PRIMARY EXAMINER